

# The Oregon and California Railroad Lands (O&C Lands): Issues for Congress

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## Summary

The Oregon and California Railroad (O&C) lands consist of 2.6 million acres of timberland in western Oregon. The majority of these lands (2.5 million acres) were originally granted to the Oregon & California Railroad Company in 1866 for constructing approximately 300 miles of the Oregon portion of a railroad from Portland, OR, to Sacramento, CA. However, in 1915 the U.S. Supreme Court ruled that the railroad company violated the terms of the grant. The disposition of these lands was eventually resolved with the O&C Act of 1937, which revested the lands back into federal ownership to be managed by the Department of the Interior “for permanent forest production” with the purpose of providing a supply of timber, protecting watersheds, providing recreational opportunities, and contributing to the economic stability of the local communities. The O&C Act of 1937 established a revenue-sharing system with the 18 counties in Oregon that contain O&C lands. Currently at issue for Congress are payments to the counties that contain O&C land, and the applicability of various land management and environmental laws.

The O&C lands are managed under the Northwest Forest Plan (NWFP). The NWFP is a series of administrative policies and forest management directives adopted in the 1990s. The NWFP covers 24 million acres of public land, including 19 national forests managed by the Forest Service and 7 Bureau of Land Management (BLM) districts in California, Oregon, and Washington. The O&C lands make up 11% of the NWFP management area by acreage, and 37% of Oregon’s NWFP management area by acreage.

The 1937 O&C Act established a revenue sharing system to compensate for the loss of property tax revenue when the O&C lands were revested back to the federal government. When timber sales and revenues began to decline in the Pacific Northwest in the 1990s, Congress established alternative compensation systems for the county payments: first, the safety net payments specifically for the Pacific Northwest, and then, the broader Secure Rural Schools and Community Self-Determination Act of 2000 (SRS; P.L. 106-393, as amended). After several reauthorizations and extensions—including the most recent one-year reauthorization for FY2013 (P.L. 113-40)—SRS expired after the FY2013 payment was issued in early 2014. Therefore, the O&C counties will not receive an SRS payment for FY2014 (to be made in 2015), but the payments will return to 50% of receipts, unless Congress acts to extend, modify, or replace SRS. These payments would likely be significantly lower than previous years’ SRS payments.

The 113<sup>th</sup> Congress considered legislation to address the management of the O&C lands and federal payment programs to the O&C counties. A House-passed bill (H.R. 1526, the Restoring Healthy Forests for Healthy Communities Act) would have transferred management authority of much of the O&C lands to a governor-appointed panel and established a trust with fiduciary responsibility to the counties, among other provisions related to the management and applicability of federal environmental laws. A Senate bill reported out of committee, S. 1784, would have retained management authority within the BLM, but would have designated portions of the O&C lands as forestry emphasis areas, and other portions as conservation emphasis areas, each with different management prescriptions. Neither proposal was enacted.

Management of the O&C lands and federal payments to the O&C counties may continue to be issues for the 114<sup>th</sup> Congress. For example, The Oregon and California Land Grant Act of 2015, S. 132, was introduced on January 8, 2015, and is very similar to S. 1784 from the 113<sup>th</sup> Congress.

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## Introduction

The Oregon & California Railroad (O&C) lands consist of 2.6 million acres of timberland in western Oregon (see **Figure 1**). The majority of these lands (2.5 million acres) were originally granted to the Oregon & California Railroad Company in 1866 for constructing approximately 300 miles of the Oregon portion of a railroad from Portland, OR, to Sacramento, CA.<sup>1</sup> The railroad received alternating sections of land for an average of 20 miles on each side of the proposed railroad, resulting in a checkerboard ownership pattern with private, state, local, and federal ownership.<sup>2</sup> As part of the grant, Congress directed the Oregon & California Railroad Company to encourage settlement and development by selling parcels no larger than 160 acres at a maximum price of \$2.50 per acre.<sup>3</sup> However, the railroad violated the grant in part by selling larger tracts above the designated price, and also by temporarily halting sales to increase timber prices.<sup>4</sup> In 1908, the United States sued the railroad company, and in 1915 the U.S. Supreme Court ruled that the railroad violated the terms of the grant.<sup>5</sup>

The disposition of these lands was eventually resolved when the Chamberlain-Ferris Act of 1916 revested all unsold tracts of land back to the federal government.<sup>6</sup> Management concerns—such as how to compensate the counties for the loss of property tax revenue—persisted, and were addressed with the Oregon & California Railroad Lands Act of 1937 (O&C Act).<sup>7</sup> This act directed that the Department of the Interior (DOI) would administer the lands “for permanent forest production” with the purpose of providing timber, protecting watersheds, providing recreational opportunities, and contributing to the economic stability of the local communities. The O&C Act also established a revenue sharing system for the counties. Initially the lands were managed by the DOI General Land Office, but in 1946, the General Land Office was merged with the U.S. Grazing Service to create the Bureau of Land Management (BLM), which continues to administer the O&C lands. In FY2014, BLM received \$115 million in appropriations to manage the O&C lands.<sup>8</sup>

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<sup>1</sup> For a more detailed history of the lands, see Bureau of Land Management, *O&C Sustained Yield Act: the Land, the Law, the Legacy*, [http://www.blm.gov/or/files/OC\\_History.pdf](http://www.blm.gov/or/files/OC_History.pdf); or Bureau of Governmental Research and Service, School of Community Service and Public Affairs, University of Oregon, *The O&C Lands* (Eugene, OR: 1981), hereinafter referred to as *The O&C Lands*.

<sup>2</sup> Such a checkerboard ownership pattern was a common model for railroad land grants in the 1800s.

<sup>3</sup> Michael C. Blumm and Jonathan Lovvorn, “The Proposed Transfer of BLM Timber Lands to the State of Oregon,” *Land and Water Law Review*, vol. XXXII, no. 2 (1997), pp. 353-412, hereinafter referred to as Blumm & Lovvorn, 1997.

<sup>4</sup> Michael Blumm and Tim Wigington, “The Oregon & California Railroad Grant Lands’ Sordid Past, Contentious Present, and Uncertain Future: A Century of Conflict,” *Boston College Environmental Affairs Law Review*, vol. 40, no. 1 (February 2013), p. 12. Hereinafter referred to as Blumm & Wigington, 2013.

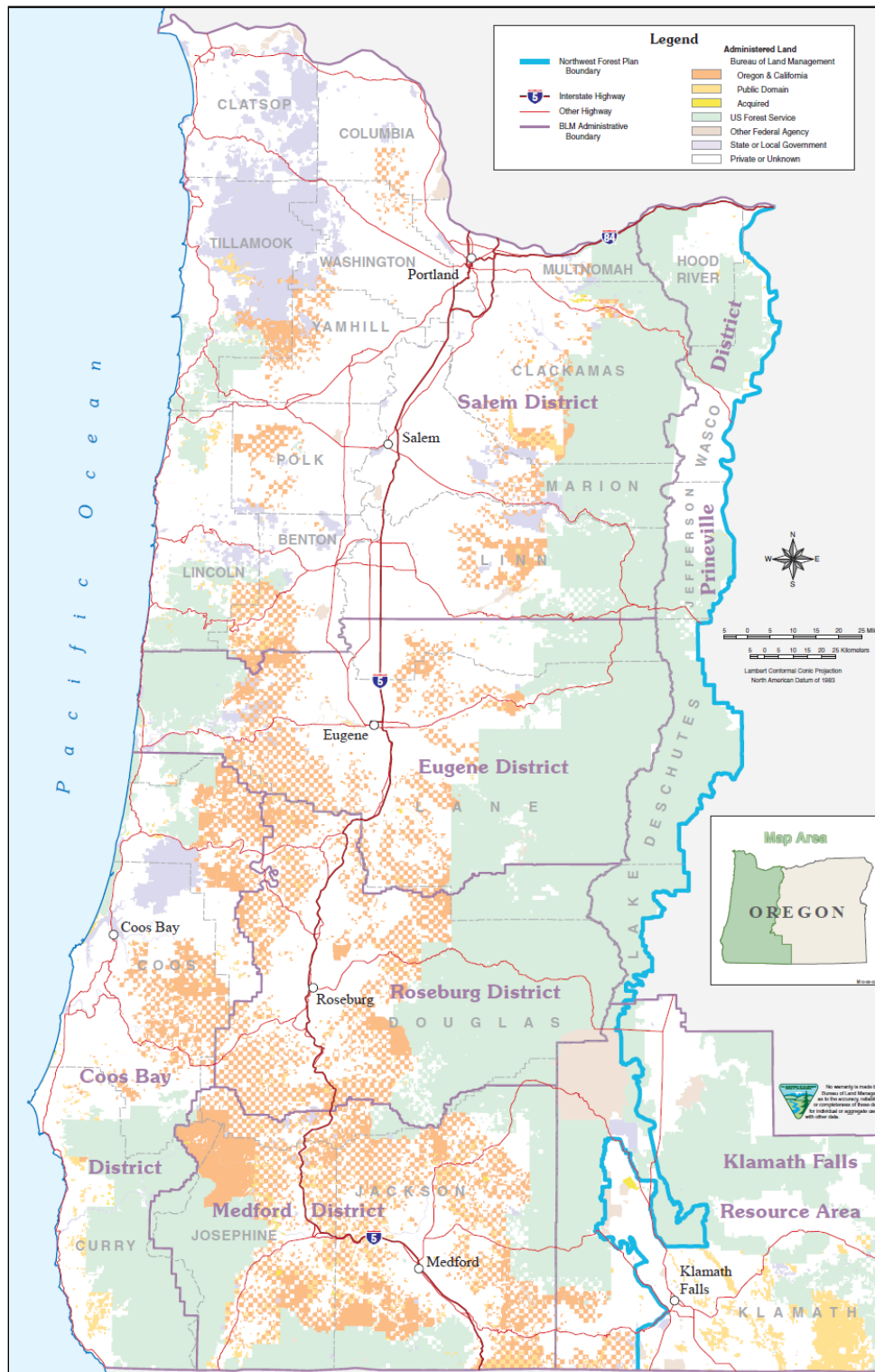
<sup>5</sup> *Oregon & California Railroad Co. v. United States*, 238 U.S. 393 (1915).

<sup>6</sup> Act of June 9, 1916, ch. 137, 39 Stat. 218.

<sup>7</sup> Act of August 28, 1937, ch. 876 (also known as the McNary Act), 50 Stat. 874; 43 U.S.C. §§1181a-1181j.

<sup>8</sup> DOI, *FY2015 Budget Justifications*, <http://www.doi.gov/budget/index.cfm>. This figure does not include the payments to counties.

Figure I. The O&C Lands



Source: BLM Legislative Affairs staff, January 30, 2013.

The O&C lands are also commonly considered to refer to approximately 472,000 acres of controverted lands managed by the Forest Service and 75,000 acres of the reconveyed Coos Bay Wagon Road (CBWR) lands. The controverted lands consisted of unselected and unpatented odd-numbered sections within the indemnity limits of the railroad, but also fell within the boundaries of a national forest established in the 1890s.<sup>9</sup> The Forest Service claimed jurisdiction, despite opposition from the DOI. The issue was resolved in 1954 when Congress approved a bill affirming the administrative jurisdiction of the Forest Service but directing that the disposition of revenue follow the formula established by the O&C Act.<sup>10</sup>

The CBWR lands—also in western Oregon—were reconveyed to federal ownership in 1919 after the failure of the Southern Oregon Company to fulfill the terms of a grant to construct a military road.<sup>11</sup> The CBWR lands are managed by BLM and have been included with the O&C lands for various legislative and management purposes. Unless otherwise noted, the term O&C lands will be used in this report to include the revested O&C lands and the reconveyed CBWR lands managed by BLM, and the controverted Forest Service O&C lands.

This report provides background information about the O&C lands and discusses federal payments made to the 18 counties in Oregon to compensate for the tax-exempt status of these federal lands. This report then analyzes some of the major issues before Congress related to the management of the O&C lands.

## Management of the O&C Lands

The O&C lands consist mostly of Douglas fir forests, which contain marketable softwood lumber commonly used for construction purposes. As part of the O&C Act of 1937, the lands were classified as timberlands to be managed for “permanent forest production.” Timber was to be sold, cut, and removed in conformity with the principle of sustained yield to provide a permanent timber supply. The statute established a 500 million board feet annual allowable sale quantity (ASQ), which could be adjusted periodically. By 1972, the ASQ peaked at approximately 1.2 billion board feet, aided in part by a 1960s modification which included the intermixed public domain forestry lands in the calculation formula.<sup>12</sup> From the 1960s to the 1980s, the average harvest level regularly exceeded 1 billion board feet per year.<sup>13</sup> Harvest levels began to decline in the 1990s, reaching a low of 13 million board feet in 1994.<sup>14</sup> Since 2000, BLM has offered an annual average of approximately 180 million board feet for harvest, including 239 million board feet in FY2014.<sup>15</sup> See **Figure 2** for timber harvest volume going back to FY1976 and **Figure 3** for

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<sup>9</sup> *The O&C Lands*, p. 20.

<sup>10</sup> Controverted Lands Act of June 24, 1954 (P.L. 83-426, 43 U.S.C. §§1181f-1181j, 68 Stat. 271).

<sup>11</sup> Act of February 26, 1919, 40 Stat. 1179.

<sup>12</sup> BLM also manages approximately 239,000 acres of land which has never been conveyed out of federal ownership—called public domain forestry lands—and are intermixed with the O&C lands. *The O&C Lands*, p.60.

<sup>13</sup> Deborah Scott and Susan Jane M. Brown, “The Oregon and California Lands Act: Revisiting the Concept of ‘Dominant Use’,” *Journal of Environmental Law and Litigation*, vol. 21 (April 2007), pp. 259-315. Hereinafter referred to as Scott & Brown, 2007.

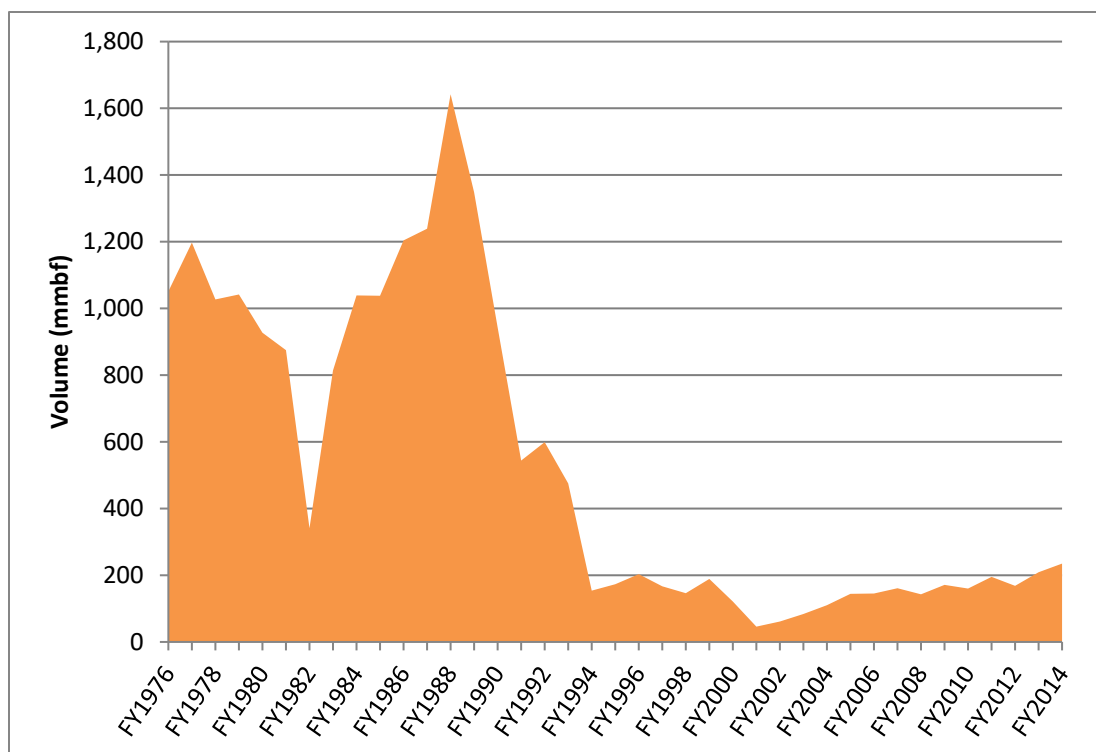
<sup>14</sup> *Ibid*, p.279.

<sup>15</sup> BLM, *Public Land Statistics*, 2012, Table 3-12, [http://www.blm.gov/public\\_land\\_statistics/pls12/pls2012-web.pdf](http://www.blm.gov/public_land_statistics/pls12/pls2012-web.pdf). This includes all forest product sales from the BLM’s western Oregon office, which includes both the O&C lands and public domain forests. FY2013 and FY2014 data provided by personal correspondence with BLM Legislative Affairs office, January 6, 2014 and December 22, 2014.

timber sale data back to FY1942 (reliable and accurate BLM harvest data prior to FY1976 are unavailable).<sup>16</sup>

The O&C Act also provided for protecting watersheds, regulating stream flow, contributing to the economic stability of local communities and industries, and providing recreational opportunities. While some see the inclusion of these other management goals as requiring the O&C lands to be managed for multiple-use, others—including some judicial opinions—interpret the O&C Act as a dominant-use statute that elevates timber production over other listed values.<sup>17</sup>

**Figure 2. BLM Western Oregon Timber Volume Harvested**  
FY1976-FY2014



**Source:** CRS. Data from BLM Legislative Affairs office, September 2013, January 2014, and December 2014.

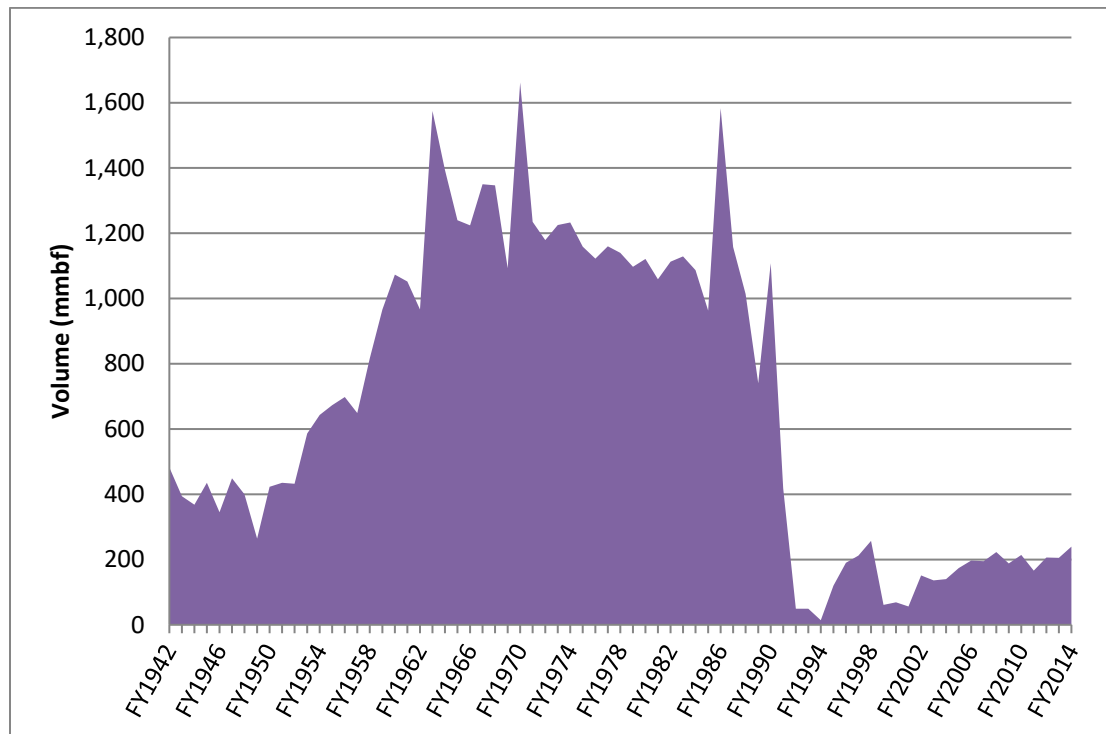
**Notes:** The large drop in timber harvests in 1982 was in response to an economic recession at the time. The decline in timber harvests beginning in the late 1980s is due to several factors, including timber market and industry factors, as well as endangered and threatened species management concerns.

<sup>16</sup> In a given fiscal year, BLM timber volume harvested data may differ from BLM timber volume offered for sale, due to the terms of the timber sale contract and lag time between timber contracts being offered and timber harvests being implemented.

<sup>17</sup> For a discussion of the legal interpretations of the O&C Act as a dominant-use statute, see Scott & Brown, 2007, and Blumm & Wigington, 2013.



**Figure 3. BLM Western Oregon Timber Volume Sold**  
FY1942-FY2014



**Source:** CRS. Data from BLM Legislative Affairs office, September 2013. FY2013 and FY2014 data from BLM Legislative Affairs Office, January 2014 and December 2014.

**Notes:** Federal timber harvest sales were relatively modest until the surge in home construction and development started in the 1950s post-WWII era. O&C harvest sales spiked in 1963 in response to several natural disasters impacting the O&C timber resources. The 1970 and 1986 spikes in sales are related to policy and legislative directives. The large drop in sales beginning in the late 1980s is due to several factors, including timber market and industry factors, as well as endangered and threatened species management concerns.

In 1998, Congress established a “No Net Loss” policy for lands administered by BLM in western Oregon.<sup>18</sup> The act requires BLM to ensure—on a 10-year basis—that the total acres of O&C and CBWR land remain consistent. The act further requires BLM to ensure the total acres of O&C, CBWR, and public domain land available for timber harvest remain stable.

## The Northwest Forest Plan

The O&C lands are included in the Northwest Forest Plan (NWFP). The NWFP is a compilation of federal policies adopted by the Clinton Administration in the 1990s in part as a result of litigation related to the northern spotted owl, which became listed as a federally threatened species under the Endangered Species Act (ESA).<sup>19</sup> The NWFP covers 24 million acres of public land, including 19 national forests managed by the Forest Service and 7 BLM districts in California, Oregon, and Washington.<sup>20</sup> The O&C lands make up 11% of the NWFP management area by acreage, and 37% of Oregon’s NWFP management area.

<sup>18</sup> The Oregon Public Lands Transfer and Protection Act of 1998, P.L. 105-321, 43 U.S.C. §1181f-2.

<sup>19</sup> P.L. 93-205, 16 U.S.C. §§1531-1540. See CRS Report RL31654, *The Endangered Species Act: A Primer*.

<sup>20</sup> *Northwest Forest Plan Record of Decision*, 1994, <http://www.reo.gov/general/aboutNWFP.htm>.



The NWFP designates different land allocations within the plan area, each with specific management prescriptions, as well as various mitigation requirements. Much of the land is allocated as late-successional reserves, consisting of trees older than 80 years that are to be managed to protect and enhance old-growth characteristics and where timber harvests are restricted. Harvests are also restricted in allocated riparian reserve areas. However, harvests are allowed on land allocated as matrix or adaptive management areas.<sup>21</sup> The NWFP also set forth various mitigation requirements, including landscape-level “survey and manage” measures for 400 specified rare species and an aquatic conservation strategy, which calls for the completion of a watershed analysis prior to implementing certain projects.<sup>22</sup>

The long-term annual timber target, or the ASQ, of the NWFP for western Oregon is approximately 203 million board feet annually.<sup>23</sup>

The NWFP, and the management of the O&C lands under the NWFP, has withstood several administrative and judicial challenges and remains largely intact.<sup>24</sup> Although some—including BLM at times, see below—argue the dominant-use mandate of the O&C Act should guide the management of the O&C lands, the management prescriptions within the NWFP apply to the O&C lands.<sup>25</sup> NWFP management of the O&C lands has been affected by litigation, however. A 2003 settlement<sup>26</sup> directs BLM to produce the full ASQ of 203 million board feet and to revise the resource management plans for the O&C lands, discussed below.

## **Western Oregon Planning Revisions**

BLM is required to develop, maintain, and revise land use plans, called resource management plans (RMPs), for all of the lands it administers.<sup>27</sup> The NWFP includes the six RMPs covering the O&C lands. In 2014, BLM initiated the process for updating the RMPs, after a previous effort was invalidated by the courts in 2012.<sup>28</sup> Updating the RMPs will likely result in changes to how the O&C lands are managed under the NWFP. The agency expects to release the draft RMPs for public comment in 2015.

The BLM’s previous effort to update the RMPS for the O&C lands was unsuccessful. In 2008, BLM issued six Records of Decision (RODs) for the RMPs to guide the management of BLM lands in western Oregon (called the Western Oregon Plan revisions, or WOPR). The WOPR proposed to increase timber harvests on six BLM districts, based in part on the justification that BLM was not achieving the harvest levels prescribed by the 1937 O&C Act.<sup>29</sup> As part of the planning process, BLM did not conduct any consultations under the ESA and was sued for failing

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<sup>21</sup> Federal land allocated as adaptive management areas are to be managed with the objectives of developing and testing new management approaches. Federal land not otherwise allocated under the NWFP is designated as matrix.

<sup>22</sup> Blumm & Wigington, 2013.

<sup>23</sup> BLM, *FY2015 Budget Justification*, 2014, p.IX-8, [http://www.doi.gov/budget/appropriations/2015/upload/FY2015\\_BLM\\_Greenbook.pdf](http://www.doi.gov/budget/appropriations/2015/upload/FY2015_BLM_Greenbook.pdf).

<sup>24</sup> For example, a court-approved 2011 settlement agreement to modify the survey and manage standards was reversed by the Ninth Circuit for being procedurally flawed, leaving the NWFP requirements in place. *Conservation Northwest v. Sherman*, 715 F.3d 1181 (9<sup>th</sup> Cir. 2013).

<sup>25</sup> See Blumm & Wigington, 2013.

<sup>26</sup> *American Forest Resource Council v. Clarke*, No. 94-1031 TPJ (D.D.C) (settlement agreement dated October 17, 2003).

<sup>27</sup> Federal Land Policy and Management Act of 1976, P.L. 94-579, 43 U.S.C. §§1701-1771.

<sup>28</sup> *Pacific Rivers Council v. Shepard*, No. 11-442-HU (D.Or. Mar. 20, 2012).

<sup>29</sup> Blumm & Wigington, 2013.

to do so. In 2009, the DOI withdrew the WOPR. In 2011, a federal court held the withdrawal failed to provide public notice and comment,<sup>30</sup> but in 2012, a different federal court vacated the WOPR.<sup>31</sup> BLM western Oregon districts continue to be managed under the 1994 NWFP.<sup>32</sup>

## Wilderness

BLM interprets protecting wilderness characteristics on O&C lands as inconsistent with the O&C Act.<sup>33</sup> BLM did not evaluate any of the O&C lands as Wilderness Study Areas (WSAs) under Section 603 or Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>34</sup> However, Congress has designated at least two wilderness areas within the O&C lands<sup>35</sup> and has designated several wild and scenic rivers within the O&C land areas.

## Federal Payments to the O&C Counties

The counties containing the O&C lands had a financial stake in the O&C lands because they received tax payments from the railroad until 1911, when the railroad stopped paying in anticipation of the land being returned to federal ownership. When the lands were returned to federal ownership in 1916, the counties lost some of their tax base. Congress debated the federal government's responsibility for compensating the counties for the loss of potential tax revenue until the 1937 O&C Act created a revenue-sharing system dependent on timber sales. The debate was reignited in the late 1990s, when timber revenues declined, and continued through the 113<sup>th</sup> Congress.

## Early Debates over the Payment System

The 1916 Chamberlain-Ferris Act (CFA) appropriated funds for payments to be made to the counties for the railroad's unpaid 1913, 1914, and 1915 taxes.<sup>36</sup> The CFA required that the U.S. Treasury be reimbursed for those payments from revenue generated by the sale of timber from the O&C lands. However, the CFA first allocated receipts to the Treasury for reimbursement of expenses, which included compensating the O&C Railroad Company for the lands revested to the federal government.<sup>37</sup> Congress (and the DOI) anticipated the O&C lands would generate enough revenue from timber sales that there would be funds available after the federal government was fully reimbursed for the acquisition cost and the tax equivalency payments. Therefore, after reimbursing the federal government, the CFA allocated the remaining receipts to the state for

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<sup>30</sup> *Douglas Timber Operators, Inc. v. Salazar*, 774 F. Supp. 2d. 245 (D.D.C. 2011).

<sup>31</sup> *Pacific Rivers Council v. Shepard*, No. 11-442-HU (D.Or. Mar. 20, 2012).

<sup>32</sup> See BLM Western Oregon Plan Decisions Withdrawn, <http://www.blm.gov/or/plans/wopr/>.

<sup>33</sup> See WOPR, Appendix K. [http://www.blm.gov/or/plans/wopr/deis/files/vol%203/WOPR\\_DEIS\\_App\\_K.pdf](http://www.blm.gov/or/plans/wopr/deis/files/vol%203/WOPR_DEIS_App_K.pdf).

<sup>34</sup> P.L. 94-579, 43 U.S.C. §§1701-1771. For more information on wilderness designations, see CRS Report RL31447, *Wilderness: Overview and Statistics*.

<sup>35</sup> The two wilderness areas within the O&C lands are: the Table Rock Wilderness, consisting of 5,781 acres established in 1984 by P.L. 98-328, and the Wild Rogue Wilderness, consisting of 36,700 acres established in 1978 by P.L. 95-237 §3(b).

<sup>36</sup> These are known as tax equivalency payments. Blumm & Wigington, 2013.

<sup>37</sup> The CFA directed the railroad to be paid the difference between the revenue the railroad had already generated from the grant and revenue that would have been generated from selling the remaining parcels at the designated price, which came to approximately \$4 million. *The O&C Lands*, p. 10.

schools (25%); to the counties for schools, roads, and port districts (25%); to the Reclamation Fund (40%); and then to the Treasury (10%).

Initial revenues from O&C timber sales were insufficient to make any payments except to the Treasury for reimbursement of the acquisition cost to the railroad.<sup>38</sup> By 1926, there had not been enough revenue generated to make any payments to the state or counties, and the federal government still had not been reimbursed for the entirety of the 1913-1916 tax equivalency payments. Congress again authorized tax equivalency payments to the counties—for the period of 1916-1926—in the 1926 Stanfield Act.<sup>39</sup> The act also changed the priority for receipts to first pay the counties an annual tax equivalency payment going forward, and second priority to reimburse the federal government any remaining balance for past tax equivalency payments. After those payments, any additional revenue was to be distributed along the same formula established in the CFA, creating both a tax equivalency payment and a revenue sharing payment for the counties. However, timber sale revenue continued to be insufficient to pay the entire calculated tax burden. By 1936, tax equivalency payments to the counties had only been made through 1933, and the U.S. Treasury was still owed approximately \$8.4 million for those payments, before disbursement to the state and other federal government accounts under the formula.<sup>40</sup>

## **O&C Act of 1937 Revenue Distribution**

During the debates preceding the O&C Act, Congress again considered tax equivalency payments or revenue-sharing payments for the O&C counties.<sup>41</sup> The Oregon congressional delegation and the Association of O&C Counties (AOCC) supported tax equivalency payments, while the DOI supported a revenue-sharing payment. Congress eventually settled on a revenue-sharing system, in part to avoid the deficits generated by the CFA and Stanfield Act tax equivalency payments.<sup>42</sup>

As enacted, the O&C Act is based on a revenue-sharing system, albeit with a different allocation formula from the CFA. Section 2(a) of the act allocated 50% of the revenue directly to the counties. Section 2(b) allocated 25% to the U.S. Treasury for accrued taxes under the Stanfield Act “until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.” The section then directed that, after such accrued taxes have been paid, 25% of the receipts “shall be paid annually [to the counties].” Section 2(c) allocated the remaining 25% for the administration of the act.<sup>43</sup>

The final payment for historic accrued taxes on the lands was made in 1951, and in 1952 the O&C counties received 75% of the receipts.<sup>44</sup> However, beginning in 1953, language in annual Interior and Related Agencies appropriations bills, which provide funding for the BLM, directed one-third of the counties’ share (25% of total receipts) as “plow-back” money to the federal government to be used for the management of the O&C lands, including road maintenance and

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<sup>38</sup> *The O&C Lands*, p. 101.

<sup>39</sup> Act of July 13, 1926, ch. 897, 44 Stat. 915.

<sup>40</sup> *The O&C Lands*, pp. 102-103.

<sup>41</sup> *The O&C Lands*, pp. 16-17.

<sup>42</sup> *The O&C Lands*, p. 102.

<sup>43</sup> Similar allocations were also made for the reconveyed CBWR lands, although the CBWR payments of 75% to the counties were limited to tax equivalency, which constrained the payments when timber harvest levels and prices were high, from the 1960s through the 1980s. (Act of May 24, 1939, ch. 144, 53 Stat. 753.) The CBWR lands have been included with the O&C lands for alternative payment systems.

<sup>44</sup> *The O&C Lands*, pp. 103-104.

reforestation.<sup>45</sup> In 1981, Congress began making a direct appropriation for O&C land management activities. From 1982 until the enactment of the alternative payment programs discussed below, 50% of the O&C receipts were paid to the counties, and 50% to the federal government.

As required by the O&C Act, the payments were allocated based on each county's proportion of the 1915 assessed value of the O&C lands.<sup>46</sup> The counties may use the payment for any purpose.

## **Payments in Lieu of Taxes (PILT)**

Congress has created various payment programs designed to compensate local governments for estimated lost tax revenue due to the presence of federal lands.<sup>47</sup> These programs take various forms. Many pertain to the lands of a particular agency (e.g., the National Forest System or the National Wildlife Refuge System). The most wide-ranging payment program is called Payments in Lieu of Taxes or PILT. The Payments in Lieu of Taxes Act of 1976<sup>48</sup> is administered by the DOI and affects most acreage under federal ownership. Exceptions include most military lands and lands under the Department of Energy, which may have separate programs. In FY2013, the PILT program covered 606.4 million acres, or about 94% of all federal land.

PILT payments are calculated using a complicated formula based in part on the eligible federal acreage and population, and are offset by the previous year's payments received under other federal payment programs. However, the payments under the O&C Act do not require an offset.<sup>49</sup>

## **Safety Net Payments**

Congress again became interested in the federal payments to the O&C counties in the 1990s. Timber harvests from the O&C lands (and from other federal lands) declined sharply after 1988. Subsequently, payments to the O&C counties also declined. While some argue that the declining harvest levels were due to successful litigation to protect the northern spotted owl and other resource protection values in the Pacific Northwest, others argue that the declining harvest levels are mostly due to other forest management, economic, and industry factors.

Congress debated alternative compensation schemes, and enacted the Safety Net payment scheme in the 1993 Omnibus Budget Reconciliation Act.<sup>50</sup> This program—also called “owl payments”—provided payments for FY1994 at 85% of the average FY1986-FY1990 payments, declining 3 percentage points annually through FY2003. These payments were for the O&C lands and also for other BLM and national forest system lands in Washington, Oregon, and California.

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<sup>45</sup> BLM, *Budget Justification and Annual Performance Plan FY2001*, pp. IX-12.

<sup>46</sup> *The O&C Lands*, p. 107. The valuation figure was adjusted in 1954, 1955, and 1964 to account for the addition of the controverted lands and various inadvertent measurement errors.

<sup>47</sup> State taxation of the federal government is inconsistent with Article VI of the Constitution, the Supremacy Clause. Also, as a condition of statehood, states waived the right to tax federal lands. See CRS Report R42439, *Compensating State and Local Governments for the Tax-Exempt Status of Federal Lands: What Is Fair and Consistent?*

<sup>48</sup> P.L. 94-565, as amended, 31 U.S.C. §6901-6907.

<sup>49</sup> For information on PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*.

<sup>50</sup> P.L. 103-66 §13982-13983, 107 Stat. 681.

## Secure Rural Schools and Community Self-Determination Act of 2000

Congress supplanted the “owl payments” with the broader Secure Rural Schools and Community Self-Determination Act of 2000 (SRS), amended in 2008, 2012, and 2013.<sup>51</sup> SRS provided the O&C counties with the option of payments based on historic receipts, rather than 50% of current receipts. The act also included temporary, declining transition payments that were higher than the calculated SRS payments for Oregon (and for certain other states), from FY2008 through FY2010.<sup>52</sup> (See **Table 1** for FY2012 and FY2013 payments.)

The program expired after the FY2013 payments were made in early 2014. Payments for FY2014 (to be made in 2015) will return to 50% of receipts for the O&C counties, unless Congress acts to extend, modify, or replace SRS. These payments would likely be significantly lower than previous years’ SRS payments. Based on revenue projections of \$11 million-\$16 million for FY2013, BLM estimated that the O&C counties would have received a 50% revenue sharing payment of \$5.5 million-\$8 million for that year, a reduction of approximately 85% compared to that year’s SRS payment.

### Effect of 2013 Sequester on SRS Payments to O&C Counties

In February 2013, BLM distributed 90% of the FY2012 SRS payment (\$36 million) to the O&C counties.<sup>53</sup> Ten percent of the payment was withheld in anticipation of the possibility of sequestration.<sup>54</sup> The reduction to DOI’s SRS program required by sequestration was 5.1% of the total payment, or \$2.0 million.<sup>55</sup> Since the sequestered amount was less than the amount withheld, DOI-BLM owed an additional SRS payment for the difference. In May 2013, BLM distributed the remaining 4.9% of the payment, resulting in a total \$38.0 million SRS payment to the O&C counties for FY2012.<sup>56</sup>

**Table 1. O&C and CBWR Acreage and FY2012-FY2013 SRS Payments**

| County               | Acreage <sup>a</sup> | Percent <sup>b</sup> | FY2012 Payments <sup>c</sup> | FY2013 Payments |
|----------------------|----------------------|----------------------|------------------------------|-----------------|
| <b>O&amp;C Lands</b> |                      |                      |                              |                 |
| Benton               | 53,159               | 2.06%                | \$771,004                    | \$816,035       |

<sup>51</sup> P.L. 106-393, 16 U.S.C. §500 note, as amended by P.L. 110-343, P.L. 112-141, and P.L. 113-40. For a description of this program, see CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*.

<sup>52</sup> While PILT payments are reduced when a county receives prior year SRS payments on Forest Service land, no such offset is applied for SRS payments on O&C land. See CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*.

<sup>53</sup> Section 102(d)(3)(e) of SRS (16 U.S.C. §7112(e)) directs that payments for a fiscal year are to be made as soon as practicable after the end of that fiscal year, meaning that the FY2012 payment was made in FY2013.

<sup>54</sup> Section 302 of the Budget Control Act (BCA; P.L. 112-25, as amended by P.L. 112-240) required the President to order a sequester, or cancellation, of budgetary resources for FY2013, in the event that Congress did not enact deficit reduction of at least \$1.2 trillion by January 15, 2012. For more information on sequestration issues, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*.

<sup>55</sup> Testimony of DOI Deputy Assistant Secretary Pamela K. Haze, before the U.S. Congress, Senate Committee on Energy and Natural Resources, *Keeping the Commitment to Rural Communities*, hearing, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., March 19, 2013.

<sup>56</sup> Personal communication with BLM Legislative Affairs office, June 19, 2013.

| County                      | Acreage <sup>a</sup> | Percent <sup>b</sup> | FY2012<br>Payments <sup>c</sup> | FY2013<br>Payments  |
|-----------------------------|----------------------|----------------------|---------------------------------|---------------------|
| Clackamas                   | 94,085               | 3.65%                | \$1,057,665                     | \$1,076,157         |
| Columbia                    | 10,960               | 0.43%                | \$712,608                       | \$734,553           |
| Coos                        | 122,040              | 4.74%                | \$2,072,140                     | \$2,353,711         |
| Curry                       | 93,416               | 3.62%                | \$1,442,516                     | \$1,418,584         |
| Douglas                     | 713,320              | 27.68%               | \$10,672,282                    | \$11,208,965        |
| Jackson                     | 435,867              | 16.91%               | \$5,455,997                     | \$5,581,881         |
| Josephine                   | 368,546              | 14.30%               | \$5,512,586                     | \$5,715,452         |
| Klamath                     | 67,161               | 2.61%                | \$1,073,616                     | \$1,103,917         |
| Lane                        | 374,847              | 14.54%               | \$5,247,157                     | \$5,459,755         |
| Lincoln                     | 8,773                | 0.34%                | \$127,952                       | \$127,491           |
| Linn                        | 85,785               | 3.33%                | \$1,237,384                     | \$1,312,570         |
| Marion                      | 20,707               | 0.80%                | \$518,109                       | \$540,216           |
| Multnomah                   | 4,208                | 0.16%                | \$248,900                       | \$261,790           |
| Polk                        | 41,651               | 1.62%                | \$898,016                       | \$925,674           |
| Tillamook                   | 38,307               | 1.49%                | \$220,123                       | \$225,170           |
| Washington                  | 11,380               | 0.44%                | \$142,145                       | \$147,541           |
| Yamhill                     | 33,003               | 1.28%                | \$272,785                       | \$283,042           |
| <b>O&amp;C<br/>SUBTOTAL</b> | <b>2,577,215</b>     | <b>100.00%</b>       | <b>\$37,682,986</b>             | <b>\$39,292,503</b> |
| <b>CBWR Lands</b>           |                      |                      |                                 |                     |
| Coos                        | 59,914               | 80.37%               | \$276,080                       | \$294,675           |
| Douglas                     | 14,633               | 19.63%               | \$49,909                        | \$42,960            |
| <b>CBWR<br/>SUBTOTAL</b>    | <b>74,547</b>        | <b>100.00%</b>       | <b>\$325,988</b>                | <b>\$337,634</b>    |
| <b>TOTAL</b>                | <b>2,651,762</b>     | <b>—</b>             | <b>\$38,008,975</b>             | <b>\$39,630,138</b> |

**Source:** Acreage data are from BLM, *Public Land Statistics*, 2012, Table 1-5, [http://www.blm.gov/public\\_land\\_statistics/index.htm](http://www.blm.gov/public_land_statistics/index.htm); FY2011 payment data are from BLM Official Payments Made to Counties website, <http://www.blm.gov/or/rac/ctypaypayments.php>. FY2012 and FY2013 payment data are from personal correspondence with BLM Legislative Affairs staff, May, 2014. Column totals may not add due to rounding.

**Notes:**

- Includes O&C and CBWR lands administered by BLM and the U.S. Forest Service.
- This is the percentage of either total O&C or total CBWR lands in the county, which is used in the SRS formula to allocate the payment.
- The FY2012 payment incorporates a 5.1% reduction for sequestration.

## Issues for Congress

Legislative issues surrounding O&C management include who should manage the lands, the applicability of the NWFP and various federal environmental laws, how to calculate and define sustained yield and allowable sale quantity, and how to address county compensation. With the



last of the SRS payments made in early 2014, the FY2014 payments (to be made in early 2015) are likely to be significantly lower than the FY2013 payments unless Congress changes current law to prevent a reversion to 50% of O&C receipts. Options for reauthorizing or modifying SRS for FY2015, authorizing a makeup payment for FY2014, or other legislative proposals to address O&C payments and land management remain as issues for the 114<sup>th</sup> Congress to consider.

Legislative issues surrounding extending SRS and similar county payment programs include the basis for compensation, the source of funds, interaction with other compensation programs, and the duration of the program. In addition, any new mandatory spending in excess of the baseline that would increase the deficit may require budgetary offsets.<sup>57</sup> Another related issue is the extent to which the federal government should retain ownership and management authority of the O&C lands.

If Congress considers reverting to a receipt-sharing payment system, several concerns have been raised. The primary concern for the O&C counties has been the decline in receipts due to the decline in timber sales since the late 1980s. For example, O&C receipts declined from a peak of \$220 million in FY1989 to a low of \$12 million in 2003. Although receipts have been gradually increasing—in FY2012 receipts were \$20 million—they remain well below the FY1989 levels.<sup>58</sup> However, returning to 1989 harvest levels is not feasible under the management of the NWFP, and given the economic realities of the current timber market. Another concern has been the annual fluctuations in the payments, which some argue harms the O&C counties by creating uncertainty and interfering with their fiscal planning.

Congress has considered a variety of other legislative proposals to address the O&C lands. In the 1990s, Congress considered proposals to transfer ownership of the O&C lands to private ownership or to transfer management to a nonfederal entity.<sup>59</sup> While legislation directly aimed at the O&C lands was not introduced in the 112<sup>th</sup> Congress, Members of Congress from the Oregon delegation in both the House and Senate released draft proposals and frameworks.<sup>60</sup> Other legislation to alter management of all federal lands would have affected O&C management.<sup>61</sup> The 113<sup>th</sup> Congress considered two O&C legislative proposals, discussed below. The 114<sup>th</sup> Congress may continue to debate these issues; for example, one bill was introduced on January 8, 2015.

## Legislative Activity in the 113<sup>th</sup> Congress

The 113<sup>th</sup> Congress considered legislation to address the management of the O&C lands and federal payments programs to the O&C counties. Title III of the House-passed H.R. 1526—the Restoring Healthy Forests for Healthy Communities Act—would have transferred management authority of much of the O&C lands to a panel appointed by the governor of Oregon and established a trust with fiduciary responsibility to the counties, among other provisions related to the management and applicability of federal environmental laws. S. 1784, as reported out of the

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<sup>57</sup> For an overview of federal budget procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*. For background on certain budget rules, see CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*.

<sup>58</sup> BLM, *Public Land Statistics*, 2012, Table 3-12, [http://www.blm.gov/public\\_land\\_statistics/pls12/pls2012-web.pdf](http://www.blm.gov/public_land_statistics/pls12/pls2012-web.pdf).

<sup>59</sup> For example, see H.R. 3769 in the 104<sup>th</sup> Congress. For more information, see *Blumm and Lovvorn, 1997*.

<sup>60</sup> For a copy of the House proposal, see [http://www.defazio.house.gov/index.php?option=com\\_content&view=article&id=759&Itemid=81](http://www.defazio.house.gov/index.php?option=com_content&view=article&id=759&Itemid=81). For a copy of Senator Wyden's proposed O&C framework, see Phil Taylor, "Wyden offers 'principles' to break timber impasse in Western Ore.," *Greenwire*, October 10, 2012, available at <http://www.eenews.net/Greenwire/print/2012/10/10/9>.

<sup>61</sup> H.R. 4019, for example. For more information, see CRS Report R42452, *Forest Service Payments to Counties—Title I of the Federal Forests County Revenue, Schools, and Jobs Act of 2012: Issues for Congress*.



Senate Committee on Energy and Natural Resources, would have retained management authority within the BLM, but would have designated three different management prescriptions for the O&C lands based on either a conservation or forestry emphasis, and then based on the ecology of the forest type.

### **House Action: H.R. 1526**

On September 20, 2013, the House passed H.R. 1526, the Restoring Healthy Forests for Healthy Communities Act. Title III of H.R. 1526 would have created and transferred management authority of the O&C lands to an O&C Trust under the guidance of a seven-member advisory board appointed by the governor of Oregon. The proposed O&C Trust would have had “fiduciary responsibilities to act for the benefit of the O&C counties” and would have managed the lands based on a revised definition of sustained-yield, with half of the land managed on a long-term rotation (100-120 years). The remaining forest in the proposed trust would have been managed on any rotation age as determined by the board. Although management authority would have been transferred to the board, the federal government would have retained all “right, title, and interest” in the O&C lands, enabling PILT payments to continue.

Even so, Section 312(a)(2) would have deemed that actions on the proposed O&C Trust lands would not involve federal action or discretion. This provision would have exempted actions by the proposed O&C Trust from reviews under the National Environmental Policy Act (NEPA),<sup>62</sup> the Endangered Species Act,<sup>63</sup> and the National Historic Preservation Act.<sup>64</sup> State laws governing management of private timberlands in Oregon would have applied. Title III would have also transferred forest stands older than 125 years to the Forest Service, and they would have been managed under the NWFP with a harvest prohibition on old growth. After those lands were transferred, Section 314(k) would have deemed management of the proposed O&C Trust to be compliant with ESA for the northern spotted owl. However, there are multiple ESA species in Oregon that may still have required mitigation measures (e.g., the marbled murrelet and multiple populations of salmon). The bill also would have limited judicial review of the proposed O&C Trust management to the O&C counties (Section 312(g)(2)). Additionally, the bill would have designated one new wilderness area, expanded an existing wilderness area, and designated several new wild and scenic river sections within the O&C land areas.

Revenue from the trust would have been distributed to the counties to pay for operating and management expenses (including salaries for the board members). Within 10 years, revenue would have also been used to establish a conservation fund and a reserve fund. In addition, the bill specified that a total of \$72.8 million would have been paid to the federal government over seven years. A remaining question was whether the forests could have produced timber to support a level of revenue to accomplish those distributions, or how timber markets would have reacted to an influx of additional supply. The bill did not address what would have happened if revenues were insufficient, nor did the bill establish a clear prioritization for allocating the revenue distribution between expenses, payments to the counties, payments to the Treasury, and deposits into the funds.

Title V of H.R. 1526 also would have provided a one-time SRS payment in February 2015, essentially a FY2014 payment. For the O&C counties, the payment would have been \$27 million

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<sup>62</sup> P.L. 91-190; 42 U.S.C. §§4321-4347.

<sup>63</sup> P.L. 93-205, 16 U.S.C. §§1531-1540.

<sup>64</sup> P.L. 89-665, 16 U.S.C. §§470 et seq.

less than the FY2010 payment (which would have resulted in a payment of approximately \$58 million).

### **Senate Action: S. 1784**

The Oregon and California Land Grant Act of 2013 (S. 1784), reported out of the Committee on Energy and Natural Resources on December 11, 2014, would have amended the O&C Act of 1937 and would have allocated portions of the O&C lands as “forestry emphasis areas” and other portions as “conservation emphasis areas,” each with different management prescriptions. Regardless of allocation, all of the areas would have been managed under the principles of ecological forestry<sup>65</sup> as defined in the bill, albeit with different emphases. The bill would have added an additional 700,000 acres to the O&C lands—bringing the total to 2.8 million acres—through transfers from the Forest Service, U.S. Army Corps of Engineers, and the inclusion of some BLM public domain forestry acres.

The forestry emphasis areas would have been further allocated into moist and dry forests, with different specific management prescriptions. Between 4% and 6% of the moist forestry emphasis areas would have been harvested every five years using a variable retention regeneration regime, which would have required about one-third of the trees to remain standing in clusters to mimic natural disturbance patterns. Management of dry forestry emphasis areas would have focused on improving fire resiliency primarily by reducing stand density, using harvests and prescribed fire as necessary to achieve the stated restoration goals. Hazardous fuel reduction projects close to developed areas would have been given priority. Private citizens would have been authorized to conduct forest management projects on federal land within 100 feet of their property. S. 1784 did not address the applicability of federal environmental laws or the extent of federal liability for these actions.

BLM would have been required to produce two separate planning documents every five years: landscape prioritization plans detailing the planned vegetation management projects for all three emphasis areas, and a comprehensive environmental review under NEPA for the dry forestry emphasis areas (plus specified conservation emphasis areas) and for the moist forestry emphasis areas (plus specified conservation emphasis areas). The environmental reviews would be large-scale and long-term, analyzing the potential effects of five years of forest management activities, including timber sales. The survey and management requirements under the NWFP would not apply to forestry emphasis areas. From the date of enactment, BLM would have had nine months to develop both of the draft environmental impact statements and 27 months to publish the final environmental impact statement for each project. It is unclear if BLM would have been able to comply with these deadlines, and what would have happened if the agency were unable to do so. In a departure from existing practice, BLM would not have been required to conduct any project-level NEPA reviews except in unusual circumstances.

Title II of S. 1784 would have altered the distribution of revenue from current law. It would have allocated \$4 million annually to the U.S. Treasury and 25% of the revenue (up to \$20 million) annually to BLM for administrative costs. Remaining revenue then would have been distributed to the O&C counties to fulfill a minimum payment equivalent to 50% of the revenues generated

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<sup>65</sup> The act specifies several of these ecological forestry principles (Sec. 8(b)(2)), but does not define the term. For more general information on ecological forestry, see Jerry F. Franklin and Norman K. Johnson, “A Restoration Framework for Federal Forests in the Pacific Northwest,” *Journal of Forestry*, vol. 110, no. 8 (December 2012), pp. 429-439.

in FY2013.<sup>66</sup> If there had not been enough revenue to make that minimum payment, the shortfall would have been deducted from the Treasury payment.

### **Comparing H.R. 1526 and S. 1784**

Both H.R. 1526 and S. 1784 sought to address questions about the management of the O&C lands, the applicability of the NWFP and various federal environmental laws, and how to address county compensation. However, the bills took fundamentally and philosophically different approaches, though with respect to some commonalities. For example, both bills would have provided some restrictions on old growth harvests and would have protected portions of the O&C lands through new wilderness designations.<sup>67</sup> However, while H.R. 1526 proposed divesting the management authority of the federal O&C lands to state control, in contrast, S. 1784 would have retained federal authority but with very specific management prescriptions. Both bills attempted to streamline the environmental analysis and planning procedures, but did so in different ways. S. 1784 would have prescribed a long-term, large-scale environmental document with statutorily specified analyses to cover most management actions. H.R. 1526 would have allowed management actions to proceed primarily under existing Oregon state law and would not have required compliance with certain federal environmental laws or regulations.

Both bills would have altered the distribution of timber sale revenues and attempted to establish dependable revenue for the 18 O&C counties. Much of the published analytical comparisons of the bills focused on their potential impacts on county compensation.<sup>68</sup> However, comparing revenue projections relies on several assumptions that introduce high levels of variability into the analysis and uncertainty into the conclusions. These assumptions include estimates about harvest volumes, revenues, and management costs. In particular, projecting timber volumes sold and revenues collected relies on factors beyond federal control, such as market behavior in response to the presumed increased supply of federal timber. Other important assumptions include the feasibility and cost of compliance with the implementation timelines proposed in both bills, and the consequences for failing to do so.

### **Legislative Activity in the 114<sup>th</sup> Congress**

The Oregon and California Land Grant Act of 2015, S. 132, was introduced by Senator Wyden on January 8, 2015. S. 132 is substantively similar to S. 1784 from the 113<sup>th</sup> Congress.

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<sup>66</sup> Based on FY2013 revenues of approximately \$26 million, the minimum payment to counties would total approximately \$13 million.

<sup>67</sup> For more information, see CRS Report R41610, *Wilderness: Legislation and Issues in the 114<sup>th</sup> Congress*.

<sup>68</sup> For a discussion of the various projected revenue comparisons, see Phil Taylor, “Wyden and DeFazio O&C bills would generate comparable revenue—report,” *E&E News*, December 11, 2013.

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